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June 18, 2014

Molly C. Dwyer  
Clerk, United States Court of Appeals  
for the Ninth Circuit  
PO Box 193939  
San Francisco, California 94119

RE: *Adams v. United States*, No. 13-72158  
set for oral argument July 7, 2014, in San Francisco

Dear Ms. Dwyer—

Mr. Adams's request for SOS authorization rests on the idea that *Miller v. Alabama*<sup>1</sup> is a "new rule of constitutional law" that has been "made retroactive to cases on collateral review by the Supreme Court" and "was previously unavailable."<sup>2</sup> Mr. Adams contends that *Miller* is a categorical exclusion from punishment,<sup>3</sup> which applies retroactively under the Supreme Court's decision in *Teague v. Lane*.<sup>4</sup> Courts in this circuit have held two other categorical exclusions from punishment retroactive.

First, in *Pizzuto v. Hardison*,<sup>5</sup> this Court granted authorization for an Idaho death-row prisoner to file a second or successive § 2254 petition based on *Atkins v. Virginia*.<sup>6</sup> *Atkins* articulated a categorical exclusion from punishment,<sup>7</sup> and so the *Pizzuto* court concluded that the statutory authorization criteria were satisfied.

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<sup>1</sup> 132 S. Ct. 2455 (2012).

<sup>2</sup> 28 U.S.C. § 2255 (h)(2).

<sup>3</sup> Dkt. #1 at 5.

<sup>4</sup> 489 U.S. 288 (1989).

<sup>5</sup> No. 05-77184. (A copy of the order is attached to this letter.)

<sup>6</sup> 536 U.S. 304 (2002).

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Second, in *Laird v. Schriro*,<sup>8</sup> the United States District Court for the District of Arizona granted relief to an Arizona death-row prisoner based on *Roper v. Simmons*.<sup>9</sup> *Simmons*, like *Atkins*, articulated a categorical exclusion from punishment,<sup>10</sup> which the *Laird* court held applied retroactively under an analysis parallel to the framework described in Justice O'Connor's concurring opinion in *Tyler v. Cain*.<sup>11</sup> Mr. Adams contends that *Miller* applies retroactively for similar reasons.<sup>12</sup>

Sincerely,

*s/Keith J. Hilzendeger*

Keith J. Hilzendeger  
Assistant Federal Public Defender  
*Attorney for Movant Adams*

### **CERTIFICATE OF SERVICE**

I certify that on June 18, 2014, I caused the foregoing document to be electronically filed with the Clerk of Court for the United States Court of Appeals for the Ninth Circuit using the Appellate CM/ECF system. I further certify that all case participants are registered ECF users and that service will be accomplished by the Appellate CM/ECF system.

*s/Keith J. Hilzendeger*

Keith J. Hilzendeger  
Assistant Federal Public Defender  
*Attorney for Movant Adams*

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<sup>7</sup> See *Moore v. Biter*, 725 F.3d 1184, 1188–89 (9th Cir. 2013).

<sup>8</sup> No. 2:00-cv-2410-PHX-JAT. (A copy of the order is attached to this letter.)

<sup>9</sup> 543 U.S. 551 (2005).

<sup>10</sup> See *Moore*, 725 F.3d at 1188–89.

<sup>11</sup> Compare Order, *Laird v. Schriro*, at 3–4, with 533 U.S. 656, 668–69 (2001).

<sup>12</sup> Dkt. #1 at 5–6.